

**Ganeles v Madison Sq. Garden Co.**

2020 NY Slip Op 34166(U)

December 15, 2020

Supreme Court, New York County

Docket Number: 159295/2014

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 52
Justice
INDEX NO. 159295/2014
MOTION DATE N/A
MOTION SEQ. NO. 014

ARI GANELES, ELINOR GANELES,
Plaintiff,

- v -

THE MADISON SQUARE GARDEN COMPANY, THE CITY OF NEW YORK, KEVIN ERMANN, JOSEPH BRENNAN, ANNA ERMANN, JACQUELINE PIROLO, P.O. JOHN DAVIS - FIRST NAME UNKNOWN REG. NO 946899 INTENDED TO BE THE POLICE OFFICER WHO ISSUED THE SUMMONS TO ARI GANELES ON THE NIGHT OF AUGUST 7-8, 2014 EXHIBIT A, JAMES DOE AND JAMES DOE - INTENDED TO BE THE POLICE OFFICERS AT THE HOSPITAL AND PRECINCT WHO ASSISTED IN THE COVER UP, JOHN DOE AND RICHARD ROE - INTENDED TO BE THE OTHER POLICE OFFICERS WHO WERE PRESENT AT MADISON SQUARE GARDEN ON THE NIGHT OF AUGUST 7-8, 2014

AMENDED DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 251, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263

were read on this motion to/for DISMISSAL

This action arises out of personal injuries allegedly sustained by plaintiff, Ari Ganeles, on or about August 7,2014, when he was allegedly assaulted by fellow concert-goers and off-duty New York Police Department (hereinafter "NYPD") Officers Joseph Brennan, Kevin Ermann and their respective dates during a Billy Joel concert at Madison Square Garden ("MSG"). Plaintiff's wife, Elinor Ganeles,(hereinafter collectively as "Plaintiffs"), sues herein for derivate claims. Plaintiffs allege intentional infliction of emotional distress, false arrest and malicious prosecution as a result of the City of New York's "conspiracy" to "cover up" the alleged altercation.

Defendants, The City of New York and Police Officer Lerone Davis, hereinafter collectively the City, moves for summary judgment on the grounds that plaintiff's arrest was supported by probable cause. Plaintiffs oppose the motion on the grounds that the complainant was not credible. For the reasons set forth below, the City's motion is granted and the complaint is dismissed.<sup>1</sup>

### **Undisputed Facts**

On August 7, 2014, plaintiffs attended a concert at Madison Square Garden (MSG). It is undisputed that plaintiff, Ari Ganeles, was involved in a physical altercation with other concert goers, one of whom happened to be an off-duty New York City Police Officer. As a result of the altercation, and a statement made by Jacqueline Pirolo, plaintiff was arrested.

Plaintiff was taken directly to the hospital from MSG, escorted by an NYPD police officer and was handcuffed to the bed. Plaintiff was then discharged from the hospital, taken to the precinct, where he spent approximately 7 hours, when he was released with a summons.

On August 29, 2014, all charges against the plaintiff were dismissed and sealed.

### **Summary Judgment Standard**

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]. The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Weiner v Ga-Ro Die Cutting, Inc.*, 104 AD2d 331 [1st Dept 1984] *aff'd* 65 NY2d 732 [1985].

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a

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<sup>1</sup> It is this Court's understanding that the matter as either been settled or discontinued as to all other defendants other than the moving defendants.

matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]. Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party. *Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]. Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman*, 3 NY2d 395 [1957]).

### **False Imprisonment/False Arrest and Malicious Prosecution**

With respect to the allegations of false arrest, false imprisonment and malicious prosecution, the Court finds that the arrest and subsequent prosecution of the plaintiff was supported by probable cause as a matter of law. There is no genuine issue of material fact as to the existence of probable cause.

Proof of probable cause to arrest as a matter of law constitutes a complete defense to the claims of false arrest and unlawful imprisonment, *Marrero v City of New York*, 33 AD3d 556, 557 [1st Dept 2006], as well as to claims of malicious prosecution, assuming the initial probable cause is still present at the commencement of the prosecution. *Brown v Sears Roebuck & Co.*, 297 AD2d 205, 211 [1st Dept 2002]. Proof of probable cause is not the equivalent of proof of guilt beyond a reasonable doubt but merely that it was reasonable to believe that a crime had been committed. *Agront v City of New York*, 294 AD2d 189, 190 [1st Dept 2002].

To succeed on a claim for false arrest and false imprisonment, a plaintiff must show that: (1) the defendant intended to confine him; (2) the plaintiff was conscious of the confinement; (3) the plaintiff did not consent to the confinement; and, (4) the confinement was not otherwise privileged (*Broughton v State of New York*, 37 NY2d 451, 456 [1975]). The defendants can

prevail if they prove that the arrest and imprisonment were effectuated with probable cause (*Id.*; *Rivera v City of New York*, 40 AD3d 334, 337 [1st Dept 2007]).

An officer has probable cause to arrest when in possession of facts sufficient to warrant a prudent person to believe that the suspect had committed or was committing an offense (*Ricciuti v. N.Y.C. Transit Auth.*, 124 F 3d 123, 128 [2d Cir. 1997]; see also *People v Oden*, 36 NY2d 382, 384 [1975]). When the facts resulting in an arrest are undisputed, the existence of probable cause is an issue of law for the court to decide (*Parkin v Cornell University, Inc.*, 78 NY2d 523, 528 [1991]).

Where “information given to an officer by an identified citizen, accusing plaintiffs of a specific crime, [it is] legally sufficient to provide the officer with probable cause to arrest.” *Kramer v City of New York*, 173 AD2d 155 [1st Dept 1991] citing, *People v Nichols* 156 AD2d 129, app. Denied, 76 NY2d 740; *People v Gonzalez*, 138 AD2d 622, app. denied, 71 NY2d 1027; *Jackson v County of Nassau*, 123 AD2d 834, app. denied, 69 NY2d 608; *People v Phillips*, 120 Ad2d 621.

To prevail on a claim of malicious prosecution, a plaintiff has the burden to plead and prove the following four elements: (1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff; (2) the termination of the proceeding in favor of the accused; (3) the absence of probable cause for the criminal proceeding; and (4) actual malice. *Broughton* 37 NY2d 451, 457 (1975). While plaintiff must establish all four elements listed above to prevail, defendant must only prove lack of any one of the elements to establish its prima facie entitlement to judgment.

### Discussion

Preliminarily, plaintiffs claim of intentional infliction of emotional distress is dismissed as such claims are barred as a matter of public policy. *See Lauer v City of New York*, 240 AD2d 543, lv denied 91 NY2d 807[1998]. Moreover, none of the allegations in the complaint rise to the level of outrageous and reprehensible conduct not tolerated in a civilized society. *Id.* Plaintiffs claims for negligent hiring and retention are also dismissed as it undisputed that Officer Lerone Devis was acting within the scope of her employment. *See Karoon v New York City Tr. Auth.*, 241 AD2d 32 [1st Dept 1997].

Here, it is undisputed that the police officers were confronted with a statement by a complaining witness. The witness claimed to have been struck by the plaintiff. After everything was sorted out, the plaintiff was charged with disorderly conduct and released. The Court recognizes plaintiff's arguments that the off-duty police officers may have been treated differently than the plaintiff and were not placed under arrest on the night of the incident. That, however, is not actionable.

During oral argument, plaintiff's counsel indicated testimony that all people involved in the incident should have been arrested. However, that would still mandate that this action for false arrest and malicious prosecution be dismissed. Moreover, that plaintiff was handcuffed to the bed at the hospital is also of no moment. As the plaintiff appeared to be injured but may very well have committed a crime, it was certainly reasonable for the plaintiff to be taken for treatment, while also being kept in custody during such treatment. None of that obviates the probable cause that existed in this case.

With respect to allegations of "cover-up" and conspiracy, it is well established that the State of New York does not recognize a cause of action in tort for conspiracy. *See Salerno v Pandick, Inc.*, 144 AD2d 307, 308 [1st Dept 1988]). Accordingly, those claims are dismissed. Based on the foregoing, it is hereby

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

12/15/2020

DATE

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CASE DISPOSED  
 GRANTED  DENIED  
 SETTLE ORDER  
 INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER  
 SUBMIT ORDER  
 FIDUCIARY APPOINTMENT  REFERENCE

LYLE E. FRANK, J.S.C.

**HON. LYLE E. FRANK  
J.S.C.**